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DECISION



**THE COMPTROLLER GENERAL
OF THE UNITED STATES**
WASHINGTON, D. C. 20548

FILE: B-203399.2 DATE: July 1, 1981

MATTER OF: DeVille Aluminum Products,
Inc. -- reconsideration

DIGEST:

1. Original decision dismissing protest as untimely is affirmed where protester offers no factual or legal grounds to warrant reversal.
2. Protest filed several weeks after (1) alleged oral protest to agency regarding allegedly restrictive specifications has been resolved prior to bid opening, or (2) bid opening which would constitute initial adverse agency action on oral protest, or (3) receipt of detailed notice of rejection of bid as nonresponsive, is untimely under any GAO Bid Protest Procedure provision and therefore is not for consideration on merits.

Deville Aluminum Products, Inc. requests reconsideration of our decision B-203399, June 5, 1981, 81-1 CPD _____, in which we dismissed its protest as untimely filed. We found the protest to be untimely because it was directed at the allegedly restrictive nature of the specifications, but it was not filed until after the bid opening date, contrary to the filing requirements of our Bid Protest Procedures, 4 C.F.R. § 20.2(b) (1) (1980).

We find no basis to disturb our original decision.

The original protest was filed in the General Accounting Office (GAO) on May 21, 1981, (i.e., received in GAO as shown by the GAO time/date stamp); it was dated May 15, 1981. The bid opening date for this particular solicitation was (according to Deville) either March 16 or March 17, 1981.

[Request for Reconsideration]

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The basis for DeVille's request for reconsideration is that it filed a verbal protest regarding the specifications on March 4, 1981 at which time it also requested a meeting with the contracting officer; that on March 9 the requested meeting was held; that on March 10 it sent a copy of a letter to the contracting officer, for the purpose of confirming the agreement it believed it had reached with him at the March 9 meeting. According to the March 10 letter, the contracting officer would permit certain minor deviations from the specification, provided that the requirements for certified testing and certified test reports were met and that the testing showed that the materials met certain specified performance requirements. On March 26 DeVille received a letter from the contracting officer which advised the firm that its bid was rejected as nonresponsive because the product offered failed to conform with certain aspects of the certification and performance requirements of the solicitation.

From the material submitted by DeVille, it is therefore apparent that its alleged verbal protest was resolved to its apparent satisfaction on March 9; that bid opening occurred on March 16 or 17; and that no later than March 26, 1981, it was aware of the bases for the rejection of its bid. Thus, however this protest is viewed, it was untimely as originally filed. For example, if the protest was based on restrictive specifications (as we originally understood it) our original decision was correct because the protest was not filed until after bid opening. On the other hand, if we assume an oral protest was made to the agency before bid opening as alleged, and if we ignore the apparent resolution of that protest, it is still untimely because it was not filed within 10 days of the agency's initial adverse action as specified by 4 C.F.R. § 20.2(b) (1980). In this instance, the initial adverse agency action was the bid opening. This is consistent with our holding in Bird-Johnson Company, B-199445, July 18, 1980, 80-2 CPD 49, and has been our position for a number of years. Finally, if the protest is directed at the agency's rejection of DeVille's bid as nonresponsive, it is also untimely because the protest had to have been

filed within 10 working days after the basis of the protest was known or should have been known--in this case by April 9, 1981, 10 working days after DeVille received notice of the rejection of its bid. 4 C.F.R. § 20.2(2). A protest filed on May 21, 1981, is plainly untimely under any of our timeliness requirements.

DeVilleville has therefore offered no factual or legal grounds upon which reversal of our original decision is warranted. 4 C.F.R. § 20.9(a).

The decision is affirmed.

A handwritten signature in cursive script, reading "Milton J. Fowler".

Acting Comptroller General
of the United States